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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,468	11/08/2001	Marvin Lewis JR.	2124-026	4368

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EXAMINER	
STEELE, JENNIFER A	

ART UNIT	PAPER NUMBER
1771	

MAIL DATE	DELIVERY MODE
07/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/010,468	LEWIS, MARVIN	
	Examiner	Art Unit	
	Jennifer Steele	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 May 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7 and 9-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7 and 9-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claim 1 and 9 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The term integral knitting is not defined in the specification.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

2. Claim 1-7, 9-15 rejected under 35 U.S.C. 103(a) as being unpatentable over Deignan and Gajjar (US 4,638,648) and Frenzel (US 4893482) and Spencer, Knitting Technology. The previous Office Action of 1/18/2007 is maintained. The claims were amended to include the term integral knitting in order to clarify the term "formed at substantially the same time on the same knitting machine" and that does not change the structure of the claimed invention.

Response to Arguments

1. Applicant's arguments filed 5/18/2007 have been fully considered but they are not persuasive. Applicant revised claims to change the wording of "formed at substantially the same time on the same knitted machine" to the term "integral knitting". Examiner respectfully requests more clarification of this term and has revised the previous 35 USC § 112 rejection to request clarification as it is a term not included in the specification. The Knitting Technology defines term integral knitting to describe the process that articles and whole garments are completely assembled on the knitting machine and require no further make up of operations off the machine.

2. Applicant's arguments with respect to Deignan in view of Gajjar, Frenzel and Spencer are not persuasive. Applicant argues that Deignan's apparatus includes the piece of upholstery and a narrow tape or web with a cord "incorporated into the tape" and that the Office is impermissibly modifying Deignan. Office respectfully maintains that the cord of Deignan is used to secure the upholstery to the seat, however it is the

structure of the tape that is the feature that is relied upon in the previous Office Action. In the absence of the cord, the tape of Deignan would be the same structure as the current application. In response to applicant's argument that removing the cord of Deignan would destroy Deignan's purpose, Deignan's invention is threefold. Deignan teaches a knitted tape, that encloses a cord and can be used such that the cord can tie a fabric onto a frame or cushion thereby securing the fabric to the frame. Deignan teaches that prior art taught a woven or non-woven strip of material enclosing a cord or beaded edge that serves to reinforce the upholstery. Deignan teaches it is more economical to enclose the cord and tie the fabric to the frame or cushion rather assembling the beaded edge (col. 1, lines 15-35). Deignan teaches a knitted tape with the structure, strength and flexibility required to secure a fabric to a frame, cushion or upholstery that requires a beaded edge. The Applicant teaches a tape that is to conform to the edge bead of a mattress. An edge bead can be a cord. Therefore Deignan teaches a tape with the cord is inserted into the tape. Applicant teaches a tape that can go over a cord. The structures of the tape are the same, however Deignan is teaching the cord is already in the tape, while Applicant would use the tape with a cord at a later time. Examiner does not agree that this would be impermissibly modifying the tape because the cord is part of the structure needed on the article and is not inherent in the structure of the tape.

3. Applicant's arguments that the structure of a mattress closing tape *substantially flat in cross-section* is not taught by Deignan is not persuasive. If the cord is removed then the structure of Deignan in view of Gajjar, Frenzel and Spencer in combination is

obvious over the current invention. Applicant's arguments that the purpose of Deignan is destroyed are also not persuasive as stated above, it is the structure of Deignan and not the cord that is relied upon in the 35 USC § 103(a) rejection with respect to Deignan in view of Gajjar, Frenzel and Spencer.

4. Applicant's arguments that the combination invention of Deignan in view of Gajjar, Frenzel and Spencer fails to teach a claim 9 limitation of *the mattress closing tape is covering and closely conforming to the edge bead of the mattress* are not persuasive. The combination of Deignan in view of Gajjar, Frenzel and Spencer teaches a tape with a structure as claimed. The invention of Deignan teaches the various methods that fabric is attached to upholstery to a frame or springs or foam or cushion. Deignan teaches that prior art taught a woven or non-woven strip of material enclosing a cord or beaded edge that serves to reinforce the upholstery. Deignan teaches it is more economical to enclose the cord and tie the fabric to the frame or cushion rather assembling the beaded edge (col. 1, lines 15-35).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Steele whose telephone number is (571) 272-7115. The examiner can normally be reached on Office Hours Mon-Fri 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ELIZABETH M. COLE
PRIMARY EXAMINER

7/09/2007